UNITED STATES
v.
CARL BELLAMY

IBLA 76-358 Decided May 14, 1976

Appeal from decision of Administrative Law Judge E. Kendall Clarke declaring the Grouse Creek No. 1, Grouse Creek No. 2, H.P. Placer, XKE, Golden Placer, and Claim # 12 placer mining claims and the R.G. # 1 and R.G. # 2 millsite claims null and void (Contest No. Oregon 10060).

Affirmed.

1. Administrative Procedure: Burden of Proof--Mining Claims: Contests

When the Government contests a mining claim on a charge of no discovery it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

2. Administrative Procedure: Burden of Proof--Mining Claims: Contests

Where a government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

3. Contests and Protests: Generally--Mining Claims: Generally--Mining Claims: Contests--Rules of Practice: Government Contests

A mining claim is a claim to property which may not be declared invalid without proper

> notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

APPEARANCES: Carl Bellamy, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Carl Bellamy 1/ has appealed from a decision dated November 4, 1975, by Administrative Law Judge E. Kendall Clarke which declared the Grouse Creek No. 1, the Grouse Creek No. 2, H.P. Placer, XKE, Golden Placer, and Claim # 12 placer mining claims and the R. G. # 1 and # 2 millsite claims null and void. The claims are situated in Sec. 5, T. 32 S., R. 3 W., Will. Mer., Douglas County, Oregon.

The Mining Contest (Oregon 10060) was initiated at the request of the United States Forest Service by a complaint filed by the Bureau of Land Management on December 15, 1972. The complaint charged that (1) minerals have not been found within the limits of the above-listed placer claims in sufficient quantities to constitute a valid discovery; (2) the land within the placer claims is nonmineral in character; and (3) the lands within the R.G. # 1 millsite and the R.G. # 2 millsite are not being used for mining or milling purposes.

On July 17, 1974, an answer was filed to the complaint by Carl Bellamy. A Notice of Hearing was issued July 11, 1975, setting the time for the hearing in the matter for September 18, 1975, in Medford, Oregon. On September 18, 1975, the Hearings Division

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1/ The original contest complaint also listed as contestees Richard Glenn Gosney and Hazel Gosney. After repeated attempts to serve Bellamy by mail or in person were unsuccessful, service was made by publication as provided in 43 CFR 4.450-5(b).

Service by mail was made on R. G. and Hazel Gosney.

After the notice of hearing was sent to all contestees, the Administrative Law Judge received a letter dated July 4, 1975, from Sherman W. Holmes, Esq., on behalf of Hazel Gosney stating that Glen Gosney was deceased and Hazel Gosney could not attend the hearing. The Gosneys' interest in the claims in question were also declared null and void by the Judge's November 4 decision. No appeal from that decision has been filed.

received a reply to the Notice of Hearing from Carl Bellamy in which he indicated, among other things, that he had no intention of attending the hearing.

The hearing was held as scheduled in Medford, Oregon, September 18, 1975. Appellant, as he had indicated, made no appearance. At the hearing the Government's only witness was Mr. Zane Moore, a qualified mining engineer employed by the United States Forest Service in Portland, Oregon. He testified he examined the claims in 1966 and again in July of 1971.

During his examination Mr. Moore did not observe any type of mining equipment other than a shovel on these claims (Tr. 11). In the area where there were cuts, Mr. Moore took samples which he panned and examined for gold (Tr. 12). The analysis of the residue of black sands by the Bureau of Mines showed that there was no commercially valuable materials contained within the black sands when the volume of sands on the claim was considered.

[1, 2] Mr. Moore testified that from his examination he was of the opinion that a prudent man would not be justified in expending his time or means with a reasonable prospect of developing a paying mine on any of the claims (Tr. 6). He also testified that the R.G. Nos. 1 and 2 Millsites were not being used for mining and milling purposes (Tr. 16). Based on this testimony the Judge determined that the Government had presented a prima facie case that there had not been a valid discovery on the claims. He then found the mining and the millsite claims null and void.

On appeal Bellamy has failed to show any error in the Judge's decision.

In addition to matters not relevant to the appeal, Bellamy essentially contends on appeal that he has been deprived of due process. There is no merit in this contention. After filing a timely answer to the complaint he refused to appear at the hearing. Thus, he has been afforded more than adequate opportunity to present his case and he chose not to avail himself of the administrative forum provided by the hearing.

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accord with due process of law. Administrative Procedure Act, 5 U.S.C. § 554 (1970); United States v. O'Leary, 63 I.D. 341 (1956). Due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. United States v. Ragsdale, 20 IBLA 348 (1975); United States v. McCall, 1 IBLA 115 (1970). The fact that an appellant does not see fit to either appear or produce evidence on his behalf at the hearing does not vitiate the due process

he has received. United States v. Howard, 15 IBLA 139 (1974); United States v. Alarco, 9 IBLA 1 (1973).

In this case the Judge properly rendered a decision based on the record made at the hearing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge